IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

MFA.No. 596 of 2002(B)

WCC.31/1997 of COMMISSIONER FOR WORKMENS COMPENSATION,ERNAKULAM .
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APPELLANT: 1ST RESPONDENT

P.G.RAJASHEKARAN NAIR,PROPRIETOR, GENERAL ENGINEERING CO., RESIDING AT AMAR CHITRA, PONEKKARA,ERNAKULAM.

BY ADV. SRI.P.RAMAKRISHNAN
SMT.T.C.KRISHNA

RESPONDENTS: APPLICANT AND RESPONDENTS 2 & 3
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1. SAINUDEEN P.M.,PADINJAKKARA HOUSE, UNIVERSITY P.O., KALAMASSERY.

2. SHAMSU, PATHUVANA HOUSE,S.KALAMASSERY.

3. THE ORIENTAL INSURANCE CO., ALWAYE.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/11/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 596 of 2002

Dated this the 7th day of November, 2007

Judgment

Koshy,J.

First respondent worker met with an accident during the course of employment. He was employed by the appellant as a headload worker when accident occurred. He applied for compensation before the Workmen's Compensation Commissioner. AW3 doctor issued disability certificate assessing physical disability at 15% and loss of earning capacity at 40%. He suffered fracture of lower leg. Open reduction surgery was conducted. Even though doctor assessed 40% loss of earning capacity, in view of section 4 (1) (c) (ii) and Explanation II to the above sub-section Commissioner assessed loss of earning capacity at 25% and compensation was calculated as follows:

$$2000 \times \frac{60}{100} \times \frac{25}{100} \times 197.06 = \text{Rs.}59,118/-.$$

It is admitted that Rs.15,000/- was paid towards compensation by the appellant before the claim was filed. That has to be deducted to arrive at the balance compensation payable. Therefore,

compensation payable is Rs.59,118/- - Rs.15,000/- = Rs.44,118/-. The above amount was payable with 12% interest per annum from the date of accident (25.7.1996) to the date ofdeposit (8.4.2002). The above amount shall be disbursed to the first respondent workman. Excess amount, if any, shall be refunded to the appellant.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 596 of 2002

Judgment

Dated:7th November, 2007